

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERICAN HOME SERVICING
CENTER, LLC,

CAPITAL HOME ADVOCACY
CENTER,

NATIONAL ADVOCACY CENTER,
LLC,

JAIME ABURTO, a/k/a James Aburto,
and Jamie Aburto, individually, as an
officer of American Home Servicing
Center, LLC and National Advocacy
Center, LLC, and d/b/a A.H.S.C.,
American Home Servicing Center, Local
Page, NAC, National Servicing Center,
NSC Processing, and Secured Processing,

MARCUS FIERRO, JR., individually, as a
member of American Home Servicing

Case No. SACV 18-00597-JLS-
KESx

**PRELIMINARY
INJUNCTION WITH ASSET
FREEZE, APPOINTMENT
OF RECEIVER, LIMITED
EXPEDITED DISCOVERY,
AND OTHER EQUITABLE
RELIEF AS TO
DEFENDANTS AMERICAN
HOME SERVICING
CENTER, LLC, CAPITAL
HOME ADVOCACY
CENTER, NATIONAL
ADVOCACY CENTER, LLC,
AND MARCUS FIERRO**

1 Center, LLC and National Advocacy
2 Center, LLC, and d/b/a A.H.S.C. and
3 American Home Servicing Center,
4 EVE CHRISTINE RODRIGUEZ, a/k/a
5 Elizabeth Davis, Elizabeth Powers,
6 Christina Rodriguez, Christine Rodriguez,
7 and Elizabeth Rodriguez, individually, as a
8 manager of American Home Servicing
9 Center, LLC, a member of Capital Home
10 Advocacy Center, and d/b/a National
11 Advocacy Group,
12 and SERGIO LORENZO RODRIGUEZ,
13 a/k/a Sergio Lawrence, individually, as a
14 manager of American Home Servicing
15 Center, LLC, a member of Capital Home
16 Advocacy Center, and d/b/a National
17 Advocacy Group,
18
19 Defendants.

20 Plaintiff, the Federal Trade Commission (“FTC”), pursuant to Section 13(b)
21 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the
22 2009 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524,
23 678 (Mar. 11, 2009) (“Omnibus Act”), as clarified by the Credit Card
24 Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24,
25 Section 511, 123 Stat. 1734, 1763-64 (Mar. 22, 2009) (“Credit Card Act”), and
26 amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,
27 Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010)
28 (“Dodd-Frank Act”), 12 U.S.C. § 5538, has filed a complaint to obtain temporary,
preliminary, and permanent injunctive relief, rescission or reformation of
contracts, restitution, the refund of monies paid, disgorgement of ill-gotten

monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance Relief Services Rule, 12 C.F.R. Part 1015 (“Regulation O”), and has applied for a preliminary injunction order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

On April 12, 2018, this court issued its *Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of Temporary Receiver, Limited Expedited Discovery, and Order to Show Cause Why Preliminary Injunction Should Not Issue*. (DE 20 (“TRO”).) Defendants were ordered to appear at a hearing on April 26, 2018 to “show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining the violations of the law alleged in the Complaint, continuing the freeze of their Assets, continuing the receivership, and imposing such additional relief as may be appropriate.” *Id.* at 30. This Court further ordered Defendants to file with the court and upon FTC counsel by April 20, 2018, “any answering pleadings, affidavits, motions, expert reports or declarations, or legal memoranda.”

Returns of service for American Home Servicing Center, LLC, National Advocacy Center, LLC, Marcus Fierro, Eve Christine Rodriguez, and Capital Home Advocacy were filed by Plaintiff via ECF. (DEs 24-27, 32.) Sergio Rodriguez was personally served following the Court’s hearing on the preliminary injunction.¹

¹ No Defendant responded to the Court’s Order. However, as set forth in the concurrently filed Order Extending the TRO, Defendants Christine Rodriguez and Sergio Rodriguez appeared at the hearing on the preliminary injunction on behalf of themselves and requested an extension of time to respond, which the Court granted as to those two Defendants. The Court also extended the TRO as to Jaime Aburto, who has not yet been served.

1 Having considered the parties' pleadings, papers, and argument, the Court
2 hereby **GRANTS** the Preliminary Injunction against Defendants American Home
3 Servicing Center, LLC, Capital Home Advocacy Center, National Advocacy
4 Center, LLC, and Marcus Fierro.

5 **FINDINGS OF FACT**

6 This Court, having considered the FTC's Complaint, *ex parte* application,
7 declarations, exhibits, and memoranda filed in support of the FTC's application,
8 and the evidence presented, finds that:

9 1. This Court has jurisdiction over the subject matter of this case, and
10 there is good cause to believe it will have jurisdiction over all parties hereto;

11 2. There is good cause to believe that venue lies properly with this
12 Court;

13 3. On April 11, 2018, the FTC filed its *Complaint and Memorandum in*
14 *Support of Ex Parte Application for Temporary Restraining Order with Asset*
15 *Freeze, Appointment of Temporary Receiver, Limited Expedited Discovery, and*
16 *Order to Show Cause Why Preliminary Injunction Should Not Issue* ("Ex Parte
17 Memo") and related pleadings. DE 1, 2; DE 7-9, 12-17;

18 4. On April 12, 2018, the Court entered its *Ex Parte Temporary*
19 *Restraining Order with Asset Freeze, Appointment of Temporary Receiver,*
20 *Limited Expedited Discovery, and Order to Show Cause Why Preliminary*
21 *Injunction Should Not Issue*. DE 20;

22 5. The TRO, and all of the related pleadings, was served on American
23 Home Servicing Center, LLC, Capital Home Advocacy Center, National
24 Advocacy Center, LLC, Marcus Fierro, Sergio Rodriguez, and Eve Christine
25 Rodriguez by personal service pursuant to Rule 4 of the Federal Rules of Civil
26 Procedure. DEs 24-27.

6. There is good cause to believe that the Court's ability to grant effective final relief for consumers in the form of monetary restitution and disgorgement of ill-gotten gains will suffer immediate and irreparable damage from Defendants' transfer, dissipation, or concealment of Assets or business records unless Defendants continue to be restrained and enjoined by Order of this Court;

7. Good cause exists to appoint a temporary Receiver for the Corporate Defendants;

8. Good cause exists to permit the FTC to take limited expedited discovery from third parties as to the existence and location of Assets and Documents;

9. Weighing the equities and considering the FTC's likelihood of ultimate success, a preliminary injunction order with an Asset freeze, limited expedited discovery as to the existence and location of Assets and Documents, and other equitable relief is in the public interest; and

10. No security is required of any agency of the United States for the issuance of a preliminary injunction order. Fed. R. Civ. P. 65(c).

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. “**Asset**” means any legal or equitable interest in, right to, or claim to, any property, wherever located and by whomever held.

B. **“Asset Freeze Accounts”** includes accounts that are held by or for the benefit of, or controlled by, directly or indirectly, any Corporate Defendant, the Individual Defendant, and other Receivership Entities.

C. **“Corporate Defendants”** means, collectively, American Home Servicing Center, LLC (“American Home”), Capital Home Advocacy Center

1 (“Capital Home”), and National Advocacy Center, LLC (“National Advocacy”),
2 and each of their subsidiaries, affiliates, successors, and assigns.

3 D. **“Defendant(s)”** means Corporate Defendants and Marcus Fierro, Jr.,
4 individually, collectively, or in any combination.

5 E. **“Document”** is synonymous in meaning and equal in scope to the
6 usage of “document” and “electronically stored information” in Federal Rule of
7 Civil Procedure 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings,
8 graphs, charts, photographs, sound and video recordings, images, Internet sites,
9 web pages, websites, electronic correspondence, including e-mail and instant
10 messages, contracts, accounting data, advertisements, FTP Logs, Server Access
11 Logs, books, written or printed records, handwritten notes, telephone logs,
12 telephone scripts, receipt books, ledgers, personal and business canceled checks
13 and check registers, bank statements, appointment books, computer records,
14 customer or sales databases and any other electronically stored information,
15 including Documents located on remote servers or cloud computing systems, and
16 other data or data compilations from which information can be obtained directly
17 or, if necessary, after translation into a reasonably usable form. A draft or non-
18 identical copy is a separate document within the meaning of the term.

19 F. **“Electronic Data Host”** means any person or entity in the business
20 of storing, hosting, or otherwise maintaining electronically stored information.
21 This includes, but is not limited to, any entity hosting a website or server, and any
22 entity providing “cloud based” electronic storage.

23 G. **“Individual Defendant”** means Marcus Fierro, Jr., individually.

24 H. **“Receiver”** means the receiver appointed in Section XI of this Order
25 and any deputy receivers that shall be named by the receiver.

26 I. **“Receivership Entities”** means Corporate Defendants as well as any
27 other entity that has conducted any business related to Defendants’ mortgage
28

1 assistance operation, including receipt of Assets derived from any activity that is
2 the subject of the Complaint in this matter, and that the Receiver determines is
3 controlled or owned by any Defendant, including Capital Freedom Mortgage
4 Solutions and Local Page, LLC.

5 **ORDER**

6 **I. PROHIBITED BUSINESS ACTIVITIES**

7 **IT IS THEREFORE ORDERED** that Defendants, their officers, agents,
8 employees, and attorneys, and all other persons in active concert or participation
9 with them, who receive actual notice of this Order by personal service or
10 otherwise, whether acting directly or indirectly, in connection with the
11 advertising, marketing, promoting, or offering for sale of any goods or services,
12 are restrained and enjoined from misrepresenting or assisting others in
13 misrepresenting, expressly or by implication, any material fact, including, but not
14 limited to:

15 A. Defendants' likelihood of obtaining mortgage loan modifications on
16 behalf of consumers;

17 B. Defendants' confirmation of mortgage loan modifications on behalf
18 of consumers; and

19 C. Any other fact material to consumers concerning any good or service,
20 such as: the total costs; any material restrictions, limitations, or conditions; or any
21 material aspect of its performance, efficacy, nature, or central characteristics.

22 **II. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION**

23 **IT IS FURTHER ORDERED** that Defendants, their officers, agents,
24 employees, and attorneys, and all other persons in active concert or participation
25 with any of them, who receive actual notice of this Order, whether acting directly
26 or indirectly, are hereby restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing, the name, address, birth date, telephone number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with any activity that pertains to the subject matter of this Order; and

B. Benefitting from or using the name, address, birth date, telephone number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with any activity that pertains to the subject matter of this Order.

Provided, however, that Defendants may disclose such identifying information to a law enforcement agency, to their attorneys as required for their defense, as required by any law, regulation, or court order, or in any filings, pleadings or discovery in this action in the manner required by the Federal Rules of Civil Procedure and by any protective order in the case.

III. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby restrained and enjoined from:

C. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Assets that are:

1. Asset Freeze Accounts;
1. owned or controlled, directly or indirectly, by any Defendant;
2. held, in part or in whole, for the benefit of any Defendant;

1 3. in the actual or constructive possession of any Defendant; or

2 4. owned or controlled by, in the actual or constructive
3 possession of, or otherwise held for the benefit of, any corporation,
4 partnership, asset protection trust, or other entity that is directly or
5 indirectly owned, managed or controlled by any Defendant.

6 D. Opening or causing to be opened any safe deposit boxes, commercial
7 mail boxes, or storage facilities titled in the name of any Defendant or subject to
8 access by any Defendant, except as necessary to comply with written requests
9 from the Receiver acting pursuant to its authority under this Order;

10 E. Incurring charges or cash advances on any credit, debit, or ATM card
11 issued in the name, individually or jointly, of any Corporate Defendant or any
12 corporation, partnership, or other entity directly or indirectly owned, managed, or
13 controlled by any Defendant or of which any Defendant is an officer, director,
14 member, or manager. This includes any corporate bankcard or corporate credit
15 card account for which any Defendant is, or was on the date that this Order was
16 signed, an authorized signor; or

17 F. Cashing any checks or depositing any money orders or cash received
18 from consumers, clients, or customers of any Defendant.

19 The Assets affected by this Section shall include: (1) all Assets of
20 Defendants as of the time the TRO was entered; and (2) Assets obtained by
21 Defendants after the TRO was entered if those Assets are derived from any
22 activity that is the subject of the Complaint in this matter or that is prohibited by
23 this Order. This Section does not prohibit any transfers to the Receiver or
24 repatriation of foreign Assets specifically required by this order.

1 such Assets, except by further order of this Court; provided, however, that this
2 provision does not prohibit the Individual Defendant from incurring charges on a
3 personal credit card established prior to entry of this Order, up to the pre-existing
4 credit limit;

5 B. Deny any person, except the Receiver, access to any safe deposit box,
6 commercial mail box, or storage facility that is titled in the name of any
7 Defendant, either individually or jointly, or otherwise subject to access by any
8 Defendant;

9 C. Provide Plaintiff's counsel and the Receiver, within three (3) days of
10 receiving a copy of this Order, a sworn statement setting forth, for each Asset or
11 account covered by this Section:

- 12 1. The identification number of each such account or Asset;
- 13 2. The balance of each such account, or a description of the nature and
14 value of each such Asset as of the close of business on the day on
15 which this Order is served, and, if the account or other Asset has been
16 closed or removed, the date closed or removed, the total funds
17 removed in order to close the account, and the name of the person or
18 entity to whom such account or other Asset was remitted; and
- 19 3. The identification of any safe deposit box, commercial mail box, or
20 storage facility that is either titled in the name, individually or jointly,
21 of any Defendant, or is otherwise subject to access by any Defendant;
22 and

23 D. Upon the request of Plaintiff's counsel or the Receiver, within three
24 (3) days provide Plaintiff's counsel and the Receiver with copies of all records or
25 other Documents pertaining to each account covered by this Section or Asset,
26 including originals or copies of account applications, account statements,
27 signature cards, checks, drafts, deposit tickets, transfers to and from the accounts,
28

1 including wire transfers and wire transfer instructions, all other debit and credit
2 instruments or slips, currency transaction reports, 1099 forms, and all logs and
3 records pertaining to safe deposit boxes, commercial mail boxes, and storage
4 facilities.

5 Provided, however, that this Section does not prohibit any transfers to the
6 Receiver or repatriation of foreign Assets specifically required by this order.

7 **V. FINANCIAL DISCLOSURES**

8 **IT IS FURTHER ORDERED** that any Defendant that has not yet
9 provided Financial Statements to the FTC in accordance with Section V of the
10 TRO, within three (3) business days of entry of this Order, shall prepare and
11 deliver to Plaintiff's counsel and the Receiver:

12 A. completed financial statements on the forms attached to this Order as
13 **Attachment A** (Financial Statement of Individual Defendant) for the Individual
14 Defendant, and **Attachment B** (Financial Statement of Corporate Defendant) for
15 each Corporate Defendant; and

16 B. completed **Attachment C** (IRS Form 4506, Request for Copy of a
17 Tax Return) for each Individual and Corporate Defendant.

18 **VI. FOREIGN ASSET REPATRIATION**

19 **IT IS FURTHER ORDERED** that within five (5) days following entry of
20 this Order on the docket, to the extent not already done so in accordance with the
21 TRO, each Defendant shall:

22 A. Provide Plaintiff's counsel and the Receiver with a full accounting,
23 verified under oath and accurate as of the date of this Order, of all Assets,
24 Documents, and accounts outside of the United States which are: (1) titled in the
25 name, individually or jointly, of any Defendant; (2) held by any person or entity
26 for the benefit of any Defendant or for the benefit of, any corporation, partnership,
27 asset protection trust, or other entity that is directly or indirectly owned, managed
28

1 or controlled by any Defendant; or (3) under the direct or indirect control, whether
2 jointly or singly, of any Defendant;

3 B. Take all steps necessary to provide Plaintiff's counsel and Receiver
4 access to all Documents and records that may be held by third parties located
5 outside of the territorial United States of America, including signing the Consent
6 to Release of Financial Records appended to this Order as **Attachment D**.

7 C. Transfer to the territory of the United States and all Documents and
8 Assets located in foreign countries which are: (1) titled in the name, individually
9 or jointly, of any Defendant; (2) held by any person or entity for the benefit of any
10 Defendant or for the benefit of, any corporation, partnership, asset protection trust,
11 or other entity that is directly or indirectly owned, managed or controlled by any
12 Defendant; or (3) under the direct or indirect control, whether jointly or singly, of
13 any Defendant; and

14 The same business day as any repatriation, (1) notify the Receiver and
15 counsel for Plaintiff of the name and location of the financial institution or other
16 entity that is the recipient of such Documents or Assets; and (2) serve this Order
17 on any such financial institution or other entity.

18 **VII. NON-INTERFERENCE WITH REPATRIATION**

19 **IT IS FURTHER ORDERED** that Defendants, their officers, agents,
20 employees, and attorneys, and all other persons in active concert or participation
21 with any of them, who receive actual notice of this Order, whether acting directly
22 or indirectly, are hereby restrained and enjoined from taking any action, directly
23 or indirectly, which may result in the encumbrance or dissipation of foreign
24 Assets, or in the hindrance of the repatriation required by this Order, including,
25 but not limited to:

26 A. Sending any communication or engaging in any other act, directly or
27 indirectly, that results in a determination by a foreign trustee or other entity that a
28

1 “duress” event has occurred under the terms of a foreign trust agreement until
2 such time that all Defendants’ Assets have been fully repatriated pursuant to this
3 Order; or

4 B. Notifying any trustee, protector or other agent of any foreign trust or
5 other related entities of either the existence of this Order, or of the fact that
6 repatriation is required pursuant to a court order, until such time that all
7 Defendants’ Assets have been fully repatriated pursuant to this Order.

8 **VIII. CONSUMER CREDIT REPORTS**

9 **IT IS FURTHER ORDERED** that Plaintiff may obtain credit reports
10 concerning any Defendants pursuant to Section 604(a)(1) of the Fair Credit
11 Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit
12 reporting agency from which such reports are requested shall provide them to
13 Plaintiff.

14 **IX. PRESERVATION OF RECORDS**

15 **IT IS FURTHER ORDERED** that Defendants, their officers, agents,
16 employees, and attorneys, and all other persons in active concert or participation
17 with any of them, who receive actual notice of this Order, whether acting directly
18 or indirectly, are hereby restrained and enjoined from:

19 A. Destroying, erasing, falsifying, writing over, mutilating, concealing,
20 altering, transferring, or otherwise disposing of, in any manner, directly or
21 indirectly, Documents that relate to: (1) the business, business practices, Assets,
22 or business or personal finances of any Defendant; (2) the business practices or
23 finances of entities directly or indirectly under the control of any Defendant; or (3)
24 the business practices or finances of entities directly or indirectly under common
25 control with any other Defendant; and
26
27
28

1 Failing to create and maintain Documents that, in reasonable detail,
2 accurately, fairly, and completely reflect Defendants' incomes, disbursements,
3 transactions, and use of Defendants' Assets.

4 **X. REPORT OF NEW BUSINESS ACTIVITY**

5 **IT IS FURTHER ORDERED** that Defendants, their officers, agents,
6 employees, and attorneys, and all other persons in active concert or participation
7 with any of them, who receive actual notice of this Order, whether acting directly
8 or indirectly, are hereby restrained and enjoined from creating, operating, or
9 exercising any control over any business entity, whether newly formed or
10 previously inactive, including any partnership, limited partnership, joint venture,
11 sole proprietorship, or corporation, without first providing Plaintiff's counsel and
12 the Receiver with a written statement disclosing: (1) the name of the business
13 entity; (2) the address and telephone number of the business entity; (3) the names
14 of the business entity's officers, directors, principals, managers, and employees;
15 and (4) a detailed description of the business entity's intended activities.

16 **XI. RECEIVER**

17 **IT IS FURTHER ORDERED** that Krista L. Freitag is appointed as
18 receiver of the Receivership Entities with full powers of an equity receiver. The
19 Receiver shall be solely the agent of this Court in acting as Receiver under this
20 Order. The Receiver shall comply with all local rules and laws governing federal
21 equity receivers, including but not limited to Local Rules 66-1 through 66-5.1 and
22 Local Rule 66-8.

23 **XII. DUTIES AND AUTHORITY OF RECEIVER**

24 **IT IS FURTHER ORDERED** that the Receiver is directed and authorized
25 to accomplish the following:

26 A. Assume full control of Receivership Entities by removing, as the
27 Receiver deems necessary or advisable, any director, officer, independent
28

1 contractor, employee, attorney, or agent of any Receivership Entity from control
2 of, management of, or participation in, the affairs of the Receivership Entity;

3 B. Take exclusive custody, control, and possession of all Assets and
4 Documents of, or in the possession, custody, or under the control of, any
5 Receivership Entity, wherever situated;

6 C. Conserve, hold, manage, and prevent the loss of all Assets of the
7 Receivership Entities, and perform all acts necessary or advisable to preserve the
8 value of those Assets. The Receiver shall assume control over the income and
9 profits therefrom and all sums of money now or hereafter due or owing to the
10 Receivership Entities. The Receiver shall have full power to sue for, collect, and
11 receive, all Assets of the Receivership Entities and of other persons or entities
12 whose interests are now under the direction, possession, custody, or control of, the
13 Receivership Entities. Provided, however, that the Receiver shall not attempt to
14 collect any amount from a consumer if the Receiver believes the consumer's debt
15 to the Receivership Entities has resulted from the deceptive acts or practices or
16 other violations of law alleged in the Complaint in this matter, without prior Court
17 approval;

18 D. Obtain, conserve, hold, manage, and prevent the loss of all
19 Documents of the Receivership Entities, and perform all acts necessary or
20 advisable to preserve such Documents. The Receiver shall: divert mail; preserve
21 all Documents of the Receivership Entities that are accessible via electronic
22 means (such as online access to financial accounts and access to electronic
23 documents held onsite or by Electronic Data Hosts, by changing usernames,
24 passwords or other log-in credentials; take possession of all electronic Documents
25 of the Receivership Entities stored onsite or remotely; take whatever steps
26 necessary to preserve all such Documents; and obtain the assistance of the FTC's
27
28

1 Digital Forensic Unit for the purpose of obtaining electronic documents stored
2 onsite or remotely.

3 E. Choose, engage, and employ attorneys, accountants, appraisers, and
4 other independent contractors and technical specialists, as the Receiver deems
5 advisable or necessary in the performance of duties and responsibilities under the
6 authority granted by this Order;

7 F. Make payments and disbursements from the receivership estate that
8 are necessary or advisable for carrying out the directions of, or exercising the
9 authority granted by, this Order, and to incur, or authorize the making of, such
10 agreements as may be necessary and advisable in discharging his or her duties as
11 Receiver. The Receiver shall apply to the Court for prior approval of any
12 payment of any debt or obligation incurred by the Receivership Entities prior to
13 the date of entry of this Order, except payments that the Receiver deems necessary
14 or advisable to secure Assets of the Receivership Entities, such as rental
15 payments;

16 G. Take all steps necessary to secure and take exclusive custody of each
17 location from which the Receivership Entities operate their businesses. Such steps
18 may include, but are not limited to, any of the following, as the Receiver deems
19 necessary or advisable: (1) securing the location by changing the locks and alarm
20 codes and disconnecting any internet access or other means of access to the
21 computers, servers, internal networks, or other records maintained at that location;
22 and (2) requiring any persons present at the location to leave the premises, to
23 provide the Receiver with proof of identification, and/or to demonstrate to the
24 satisfaction of the Receiver that such persons are not removing from the premises
25 Documents or Assets of the Receivership Entities. Law enforcement personnel,
26 including, but not limited to, police or sheriffs, may assist the Receiver in
27 implementing these provisions in order to keep the peace and maintain security;
28

1 H. Take all steps necessary to prevent the modification, destruction, or
2 erasure of any web page or website registered to and operated, in whole or in part,
3 by any Defendants, and to provide access to all such web page or websites to
4 Plaintiff's representatives, agents, and assistants, as well as Defendants and their
5 representatives;

6 I. Enter into and cancel contracts and purchase insurance as advisable
7 or necessary;

8 J. Prevent the inequitable distribution of Assets and determine, adjust,
9 and protect the interests of consumers who have transacted business with the
10 Receivership Entities;

11 K. Make an accounting, as soon as practicable, of the Assets and
12 financial condition of the receivership and file the accounting with the Court and
13 deliver copies thereof to all parties;

14 L. Institute, compromise, adjust, appear in, intervene in, defend, dispose
15 of, or otherwise become party to any legal action in state, federal or foreign courts
16 or arbitration proceedings as the Receiver deems necessary and advisable to
17 preserve or recover the Assets of the Receivership Entities, or to carry out the
18 Receiver's mandate under this Order, including but not limited to, actions
19 challenging fraudulent or voidable transfers;

20 M. Issue subpoenas to obtain Documents and records pertaining to the
21 Receivership, and conduct discovery in this action on behalf of the receivership
22 estate, in addition to obtaining other discovery as set forth in this Order;

23 N. Open one or more bank accounts at designated depositories for funds
24 of the Receivership Entities. The Receiver shall deposit all funds of the
25 Receivership Entities in such designated accounts and shall make all payments
26 and disbursements from the receivership estate from such accounts. The Receiver
27 shall serve copies of monthly account statements on all parties;

1 O. Maintain accurate records of all receipts and expenditures incurred as
2 Receiver;

3 P. Allow the Plaintiffs' representatives, agents, and assistants, as well as
4 Defendants' representatives and Defendants themselves, reasonable access to the
5 premises of the Receivership Entities, or any other premises where the
6 Receivership Entities conduct business. The purpose of this access shall be to
7 inspect and copy any and all books, records, Documents, accounts, and other
8 property owned by, or in the possession of, the Receivership Entities or their
9 agents. The Receiver shall have the discretion to determine the time, manner, and
10 reasonable conditions of such access;

11 Q. Allow the Plaintiffs' representatives, agents, and assistants, as well as
12 Defendants and their representatives reasonable access to all Documents in the
13 possession, custody, or control of the Receivership Entities;

14 R. Cooperate with reasonable requests for information or assistance
15 from any state or federal civil or criminal law enforcement agency;

16 S. Suspend business operations of the Receivership Entities if in the
17 judgment of the Receiver such operations cannot be continued legally and
18 profitably;

19 T. If the Receiver identifies a nonparty entity as a Receivership Entity,
20 promptly notify the entity as well as the parties, and inform the entity that it can
21 challenge the Receiver's determination by filing a motion with the Court. If the
22 Receiver determines that notice to the entity or the parties before the Receiver
23 establishes control over the entity may result in the destruction of records,
24 dissipation of assets, or any other obstruction of the Receiver's control of the
25 entity, the Receiver must obtain permission from the Court, through an ex parte
26 application filed under seal, to delay providing notice to the entity until the
27
28

1 Receiver has established control over the nonparty entity and its assets and
2 records; and

3 If in the Receiver's judgment the business operations cannot be continued
4 legally and profitably, take all steps necessary to ensure that any of the
5 Receivership Entities' web pages or websites relating to the activities alleged in
6 the Complaint cannot be accessed by the public, or are modified for consumer
7 education and/or informational purposes, and take all steps necessary to ensure
8 that any telephone numbers associated with the Receivership Entities cannot be
9 accessed by the public, or are answered solely to provide consumer education or
10 information regarding the status of operations.

11 **XIII. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

12 **IT IS FURTHER ORDERED** that Defendants and any other person, with
13 possession, custody or control of property of, or records relating to, the
14 Receivership Entities shall, upon notice of this Order by personal service or
15 otherwise, fully cooperate with and assist the Receiver in taking and maintaining
16 possession, custody, or control of the Assets and Documents of the Receivership
17 Entities and immediately transfer or deliver to the Receiver possession, custody,
18 and control of, the following:

- 19 A. All Assets held by or for the benefit of the Receivership Entities;
20 B. All Documents of or pertaining to the Receivership Entities;
21 C. All computers, electronic devices, mobile devices and machines used
22 to conduct the business of the Receivership Entities;
23 D. All Assets and Documents belonging to other persons or entities
24 whose interests are under the direction, possession, custody, or control of the
25 Receivership Entities; and
26 E. All keys, codes, user names and passwords necessary to gain or to
27 secure access to any Assets or Documents of or pertaining to the Receivership
28

Entities, including access to their business premises, means of communication, accounts, computer systems (onsite and remote), Electronic Data Hosts, or other property.

In the event that any person or entity fails to deliver or transfer any Asset or Document, or otherwise fails to comply with any provision of this Section, the Receiver may file an Affidavit of Non-Compliance regarding the failure and a motion seeking compliance or a contempt citation.

XIV. PROVISION OF INFORMATION TO RECEIVER

IT IS FURTHER ORDERED that Defendants shall immediately provide to the Receiver:

A. A list of all Assets and accounts of the Receivership Entities that are held in any name other than the name of a Receivership Entity, or by any person or entity other than a Receivership Entity;

B. A list of all agents, employees, officers, attorneys, servants and those persons in active concert and participation with the Receivership Entities, or who have been associated or done business with the Receivership Entities; and

C. A description of any documents covered by attorney-client privilege or attorney work product, including files where such documents are likely to be located, authors or recipients of such documents, and search terms likely to identify such electronic documents.

XV. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants; Receivership Entities; Defendants' or Receivership Entities' officers, agents, employees, and attorneys, all other persons in active concert or participation with any of them, and any other person with possession, custody, or control of property of or records relating to the Receivership entities who receive actual notice of this Order shall fully cooperate with and assist the Receiver. This cooperation and assistance shall

1 include, but is not limited to, providing information to the Receiver that the
2 Receiver deems necessary to exercise the authority and discharge the
3 responsibilities of the Receiver under this Order; providing any keys, codes, user
4 names and passwords required to access any computers, electronic devices,
5 mobile devices, and machines (onsite or remotely) and any cloud account
6 (including specific method to access account) or electronic file in any medium;
7 advising all persons who owe money to any Receivership Entity that all debts
8 should be paid directly to the Receiver; and transferring funds at the Receiver's
9 direction and producing records related to the Assets and sales of the Receivership
10 Entities.

11 **XVI. NON-INTERFERENCE WITH THE RECEIVER**

12 IT IS FURTHER ORDERED that Defendants; Receivership Entities;
13 Defendants' or Receivership Entities' officers, agents, employees, attorneys, and
14 all other persons in active concert or participation with any of them, who receive
15 actual notice of this Order, and any other person served with a copy of this Order,
16 are hereby restrained and enjoined from directly or indirectly:

17 A. Interfering with the Receiver's efforts to manage, or take custody,
18 control, or possession of, the Assets or Documents subject to the receivership;

19 B. Transacting any of the business of the Receivership Entities;

20 C. Transferring, receiving, altering, selling, encumbering, pledging,
21 assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or
22 in the possession or custody of, or in which an interest is held or claimed by, the
23 Receivership Entities; or

24 D. Refusing to cooperate with the Receiver or the Receiver's duly
25 authorized agents in the exercise of their duties or authority under any order of
26 this Court.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

A. Filing or assisting in the filing of a petition for relief under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, or of any similar insolvency proceeding on behalf of the Receivership Entities;

B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Receivership Entities, including the issuance or employment of process against the Receivership Entities, except that such actions may be commenced if necessary to toll any applicable statute of limitations; or

C. Filing or enforcing any lien on any asset of the Receivership Entities, taking or attempting to take possession, custody, or control of any Asset of the Receivership Entities; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of the Receivership Entities, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise.

1 governmental unit's police or regulatory power; or (3) the enforcement of a
2 judgment, other than a money judgment, obtained in an action or proceeding by a
3 governmental unit to enforce such governmental unit's police or regulatory power.

4 **XVIII. COMPENSATION OF THE RECEIVER**

5 **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by
6 the Receiver as herein authorized, including counsel to the Receiver and
7 accountants, are entitled to reasonable compensation for the performance of duties
8 pursuant to this Order and for the cost of actual out-of-pocket expenses incurred
9 by them, from the Assets now held by, in the possession or control of, or which
10 may be received by, the Receivership Entities. The Receiver shall file with the
11 Court and serve on the parties periodic requests for the payment of such
12 reasonable compensation, with the first such request filed no more than sixty (60)
13 days after the date of entry of this Order. The Receiver shall not increase the
14 hourly rates used as the bases for such fee applications without prior approval of
15 the Court.

16 **XIX. WITHDRAWAL OF RECEIVER**

17 **IT IS FURTHER ORDERED** that if the Receiver and any professional
18 retained by the Receiver, including, but not limited to, her attorneys and
19 accountants, wish to withdraw from his or her respective appointments or
20 representations and apply for payment of their professional fees and costs at any
21 time after date of this Order, the person who wishes to withdraw must send
22 written notice seven (7) days prior to the date of the intended withdrawal to the
23 Court and to the parties along with a written report reflecting the Receiver's work,
24 findings, and recommendations, as well as an accounting for all funds and assets
25 in possession or control of the Receiver. The Receiver and professionals shall be
26 relieved of all liabilities and responsibilities, and the Receiver shall be exonerated
27 and the receivership deemed closed upon approval by the Court of withdrawal.
28

1 The Court will retain jurisdiction to consider the fee applications, report, and
2 accounting submitted by the Receiver and the professionals. The written notice
3 shall include an interim report indicating the Receiver's actions and reflect the
4 knowledge gained along with the fee applications of the Receiver and her
5 professionals. The report shall also contain the Receiver's recommendations, if
6 any.

7 **XX. DISTRIBUTION OF ORDER BY DEFENDANTS**

8 **IT IS FURTHER ORDERED** that Defendants shall immediately provide
9 a copy of this Order to each affiliate, telemarketer, marketer, sales entity,
10 successor, assign, member, officer, director, employee, agent, independent
11 contractor, client, attorney, spouse, subsidiary, division, and representative of any
12 Defendant, and shall, within ten (10) days from the date of entry of this Order, and
13 provide Plaintiff and the Receiver with a sworn statement that this provision of the
14 Order has been satisfied, which statement shall include the names, physical
15 addresses, phone number, and email addresses of each such person or entity who
16 received a copy of the Order. Furthermore, Defendants shall not take any action
17 that would encourage officers, agents, members, directors, employees,
18 salespersons, independent contractors, attorneys, subsidiaries, affiliates,
19 successors, assigns or other persons or entities in active concert or participation
20 with them to disregard this Order or believe that they are not bound by its
21 provisions.

22 **XXI. SERVICE OF THIS ORDER**

23 **IT IS FURTHER ORDERED** that copies of this Order and all other
24 pleadings, Documents, and exhibits filed contemporaneously with this Order, may
25 be served by any means, including facsimile transmission, electronic mail or other
26 electronic messaging, personal or overnight delivery, U.S. Mail or FedEx, by
27 agents and employees of Plaintiff, by any law enforcement agency, or by private
28

1 process server, upon any Defendant or any person (including any financial
2 institution) that may have possession, custody or control of any Asset or
3 Document of any Defendant, or that may be subject to any provision of this Order
4 pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure. For purposes
5 of this Section, service upon any branch, subsidiary, affiliate or office of any
6 entity shall effect service upon the entire entity.

7 **XXII. CORRESPONDENCE AND SERVICE ON PLAINTIFF**

8 **IT IS FURTHER ORDERED** that, for the purpose of this Order, all
9 correspondence and service of pleadings on Plaintiff shall be addressed to:

10 Elsie Kappler
11 Simon Han
12 Federal Trade Commission
13 600 Pennsylvania Ave., NW, Mail Drop CC-9528
14 Washington, DC 20580
15 Telephone: (202) 326-2466, -2495
16 ekappler@ftc.gov, shan@ftc.gov

17 **XXIII. RETENTION OF JURISDICTION**

18 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of
19 this matter for all purposes.

20 **IT IS SO ORDERED**, this 27th day of April, 2018, at 8:00 AM, Pacific
21 Time.

22 Dated: April 27, 2018

23 JOSEPHINE L. STATON

24 JOSEPHINE L. STATON

25 UNITED STATES DISTRICT JUDGE